

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CHARLENE KENNEDY,  
c/o Stephen Hornbuckle  
1621 114<sup>th</sup> Ave SE, Suite 222  
Bellevue, WA 98004,

Plaintiff,

v.

CENTERS FOR MEDICARE & MEDICAID  
SERVICES,  
7500 Security Boulevard,  
Baltimore, MD 21244,

Defendant.

NO.: \_\_\_\_\_

COMPLAINT FOR INJUNCTIVE RELIEF

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, to order the production of agency records, concerning documents related to a complaint investigation dated March 8, 2113 of the nursing home Evergreen of Bellingham, LLC, dba North Cascades Health and Rehabilitation Center, which defendant has improperly withheld from plaintiff.

2. Defendant may be served under Federal Rule of Civil Procedure 4(i)(1),(2) by

1  
2 delivering a copy of the summons and this complaint to the Jenny Burkan, United States  
3 attorney for the Western District of Washington where this action has been brought; and by  
4 sending a copy of the summons and this complaint by certified mail to the Centers for  
5 Medicare and Medicaid services at the Office of the General Counsel for the U.S. Department  
6 of Health and Human Services at 200 Independence Ave., S.W., Washington, D.C. 20201.

7 3. This court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B).

8 4. Plaintiff, Charlene Kennedy, is the subject of the Complaint and has requested  
9 the records which defendant is now withholding by and through her attorney Stephen  
10 Hornbuckle and/or Joseph Bartek. Plaintiff has requested this information for use in a civil  
11 lawsuit and prompt release of the information is essential to meeting a deadline for this case.

12 5. Defendant Centers for Medicare & Medicaid Services is an agency of the  
13 United States and has possession of the documents that plaintiff seeks.

14 6. By letter dated November 16, 2013, plaintiff requested access to the following  
15 documents related to a complaint investigation dated March 8, 2013 of the Evergreen of  
16 Bellingham, LLC dba North Cascades Health and Rehabilitation Center facility: investigation  
17 findings, investigation working papers, surveyor's notes, reports, SOD/POC and  
18 recommendations from the investigator to include sanctions, dispute resolutions and hearings.  
19 A copy of these letters are attached as **Exhibit 1**.

20 7. Plaintiff has received no response from Defendant to date.

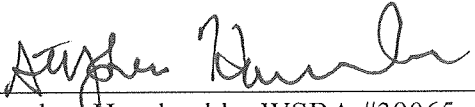
21 8. Plaintiff has a right of access to the requested information under 5 U.S.C.  
22 § 552(a)(3), and there is no legal basis for defendant's denial of such access.  
23  
24  
25

WHEREFORE, plaintiff requests this Court:

1. Order defendant to provide access to the requested documents;
2. Expedite this proceeding as provided for in 28 U.S.C. § 1657;
3. Award plaintiff costs and reasonable attorneys fees in this action, as provided in 5 U.S.C. § 552(a)(4)(E); and
4. Grant such other and further relief as may deem just and proper.

DATED this 9th day of December, 2013

THE HORNBUCKLE FIRM

By:   
Stephen Hornbuckle, WSBA #39065  
1621 114<sup>th</sup> Avenue SE, Ste 222  
Bellevue, WA 98004  
Phone: (425) 679-0742/ Fax: (425) 679-0003  
**ATTORNEY FOR PLAINTIFF**

# **EXHIBIT 1**

***LAW OFFICES OF JOSEPH P. BARTEK***

*Attorney at Law  
4911 Silver Beach Avenue  
Bellingham, WA 98226*

*Joseph P. Bartek  
joebartek@comcast.net*

Telephone: (360) 671-0609  
Facsimile: (360) 671-8075

November 16, 2013

Debbie Snyder  
CMS, Seattle Regional Office  
2201 Sixth Avenue, RX 41  
Seattle, Washington 98121

Re: Cause No. 13-2-02846-4, *Charlene Kennedy vs. Evergreen of Bellingham, LLC, d/b/a, North Cascades Health and Rehabilitation Center and EHC Management, LLC, d/b/a North Cascades Health and Rehabilitation Center*, in the Superior Court of Whatcom County, Washington

Dear Ms. Snyder:

Under the Freedom of Information Act 5 USC (552), I am requesting access to investigation into the negligent care and treatment of Charlene Kennedy, which resulted in her hospitalization and permanent disability. This survey was conducted on March 8, 2013, by Rick Woodrun, BSA, and pertained to the administration of Lisinopril to Charlene Kennedy after she already had a documented allergic reaction to the drug.

Please provide copies of surveyor notes, investigation findings, investigation working papers, reports, SOD/POC, and recommendations created during the course of a survey conducted by Rick Woodrun, RN BSN, at North Cascades Health and Rehabilitation Center and concluded on March 8, 2013.

In order to help you determine my status for the purpose of assessing fees, you should know that I am affiliated with a private business and I am seeking information for use in the company's business.

I am willing to pay fees for this request up to a maximum of \$500.00. If you estimate that the fees will exceed this limit, please inform me.

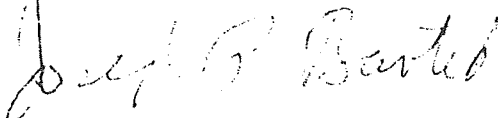
November 16, 2013

Page 2

I request that the information I seek be provided in electronic format and I would like to receive it on a personal computer disk. If you have any questions about handling this request, you may telephone me at (360) 671-0609.

Sincerely,

LAW OFFICES OF JOSEPH P. BARTEK

A handwritten signature in cursive script that reads "Joseph P. Bartek". The signature is written in dark ink and is positioned above the printed name.

Joseph P. Bartek

JPB:kmw

cc: Charlene Kennedy

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November 16, 2013

CMS FOIA Officer  
Centers for Medicare and Medicaid Services  
Mail Stop M2-20-16  
7500 Security Boulevard  
Baltimore, Maryland 21244

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To Whom It May Concern:

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Joseph P. Bartek

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